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TITLE 327 WATER POLLUTION CONTROL DIVISION

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## SECOND NOTICE OF COMMENT PERIOD

LSA Document #18-271

## PUBLIC NOTIFICATION FOR COMBINED SEWER OVERFLOWS TO THE GREAT LAKES BASIN

## PURPOSE OF NOTICE

The Indiana Department of Environmental Management (IDEM) is soliciting public comment on new rules and amendments to rules in [327 IAC 5](#) concerning federal requirements for public notification for combined sewer overflows to the Great Lakes Basin. IDEM seeks comment on the affected citations listed and any other provisions of Title 327 that may be affected by this rulemaking.

## HISTORY

First Notice of Comment Period: June 27, 2018, Indiana Register (DIN: [20180627-IR-327180271FNA](#)).

**CITATIONS AFFECTED:** [327 IAC 5-2-3](#); [327 IAC 5-2-10](#); [327 IAC 5-2.1-1](#); [327 IAC 5-2.1-2](#); [327 IAC 5-2.2](#).

**AUTHORITY:** [IC 13-14-8](#); [IC 13-15-1-2](#); [IC 13-15-2](#); [IC 13-18-3](#); [IC 13-18-4](#).

## SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING

## Basic Purpose and Background

The new final rule at 40 CFR 122.38 published in the Federal Register on January 8, 2018, by the United States Environmental Protection Agency (U.S. EPA) implements Section 425 of the Consolidated Appropriations Act of 2016, which requires U.S. EPA to work with the Great Lakes States to establish public notification requirements for combined sewer overflow (CSO) discharges to the Great Lakes Basin (83 FR 712). The public notification requirements of 40 CFR 122.38 apply to National Pollutant Discharge Elimination System (NPDES) permittees authorized to discharge a CSO to the Great Lakes Basin. This rulemaking proposes a new rule at [327 IAC 5-2.2](#) to incorporate 40 CFR 122.38 by reference. U.S. EPA's January 8, 2018, final rule also amended existing NPDES permit regulations including 40 CFR 122.21 (permit applications) and 40 CFR 122.42 (permit conditions) to reflect the addition of 40 CFR 122.38. IDEM is also proposing similar amendments to existing NPDES permit rules at [327 IAC 5-2](#). This rulemaking will also revise and clarify rule language, as necessary, to account for updated standard rule language and state requirements.

Since 2003, Indiana has had a Combined Sewer Overflow Public Notification rule at [327 IAC 5-2.1](#) that applies to any person required to possess an NPDES permit that has one or more CSO outfalls into waters of the state. The new federal rule at 40 CFR 122.38 only applies to permittees authorized to discharge a CSO to the Great Lakes Basin. The new rule at [327 IAC 5-2.2](#) will be applicable to:

- Permittees with authorized CSO discharges or the combination of authorized and unauthorized CSO discharges to the Great Lakes Basin. These permittees will no longer be required to comply with the existing CSO public notification rule at [327 IAC 5-2.1](#).

The new rule at [327 IAC 5-2.2](#) is not applicable to:

- Permittees with CSO discharges outside of the Great Lakes Basin. These permittees will continue to comply with the existing CSO public notification rule at [327 IAC 5-2.1](#).
- Permittees with only unauthorized CSO discharges in the Great Lakes Basin. These permittees will continue to comply with the existing CSO public notification rule at [327 IAC 5-2.1](#).

This rulemaking includes no changes to the public notice requirements at [327 IAC 5-2.1](#).

The purpose of this rule is to protect public health by ensuring timely notification to the public, public health departments, public drinking water facilities, and other potentially affected public entities. Timely notice of a CSO discharge may allow the public and affected public entities to take steps to reduce the public's potential exposure to pathogens associated with human sewage, which can cause a wide variety of health effects, including gastrointestinal, skin, ear, respiratory, eye, neurologic, and wound infections.

[IC 13-14-9-4](#) Identification of Restrictions and Requirements Not Imposed under Federal Law

No element of the draft rule imposes either a restriction or a requirement on persons to whom the draft rule applies that is not imposed under federal law.

## Potential Fiscal Impact

There is no fiscal impact from the Great Lakes Basin CSO Enhanced Public Notification rule beyond what is federally required. The state CSO Public Notification rule at [327 IAC 5-2.1](#) has been in effect since 2003 for all CSO dischargers throughout the state, and Great Lakes Basin CSO dischargers, having complied with the statewide rule requirements, will be familiar with many of the federal requirements. There will be no significant difference in the cost of complying with the existing state requirements or the new federal requirements. Once initial implementation has occurred to shift from meeting state to federal rule requirements, costs will be limited

mostly to staff time spent in posting electronic messages by text, electronic mail, or social media in order to fulfill the notification requirements within four hours of becoming aware that a CSO discharge has occurred. The public notification requirements of the federal rule can be fulfilled through electronic methods. The state rule, which dates to a time before social media and electronic methods of communication, such as texting, have become widespread, requires the CSO community to provide public notification of CSO events in a manner that is mutually agreeable to the recipient and the CSO community or by a reasonable, effective means if the CSO community and the recipient of the public notification cannot reach agreement on an acceptable manner of notification. The CSO communities required to comply with the state rule at [327 IAC 5-2.1](#) likely are choosing to use the updated electronic means of communication that are also the means of communication required for public notification under the federal requirements so the differences in modes of communication and associated costs between the rules [327 IAC 5-2.1](#) and [327 IAC 5-2.2](#) are likely to be insignificant.

#### **Public Participation and Work Group Information**

At this time, no work group is planned for the rulemaking. If you feel that a work group or other informal discussion on the rule is appropriate, please contact MaryAnn Stevens, Rules Development Branch, Office of Legal Counsel at (317) 232-8635 or (800) 451-6027 (in Indiana).

#### **SUMMARY/RESPONSE TO COMMENTS FROM THE FIRST COMMENT PERIOD**

IDEM requested public comment from June 27, 2018, through August 13, 2018, on alternative ways to achieve the purpose of the rule and suggestions for the development of draft rule language. IDEM received no comments during the first comment period.

#### **REQUEST FOR PUBLIC COMMENTS**

This notice requests the submission of comments on the draft rule language, including suggestions for specific revisions to language to be contained in the draft rule. Comments may be submitted in one of the following ways:

- (1) By mail or common carrier to the following address:

LSA Document #18-271 Great Lakes Basin CSO Public Notification  
MaryAnn Stevens  
Rules Development Branch  
Office of Legal Counsel  
Indiana Department of Environmental Management  
Indiana Government Center North  
100 North Senate Avenue  
Indianapolis, IN 46204-2251

- (2) By facsimile to (317) 233-5970. Please confirm the timely receipt of faxed comments by calling the Rules Development Branch at (317) 232-8922.

- (3) By electronic mail to [mstevens@idem.in.gov](mailto:mstevens@idem.in.gov). To confirm timely delivery of submitted comments, please request a document receipt when sending the electronic mail. **PLEASE NOTE: Electronic mail comments will NOT be considered part of the official written comment period unless they are sent to the address indicated in this notice.**

- (4) Hand delivered to the receptionist on duty at the thirteenth floor reception desk, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Indianapolis, Indiana.

Regardless of the delivery method used, to properly identify each comment with the rulemaking action it is intended to address, each comment document must clearly specify the LSA document number of the rulemaking.

#### **COMMENT PERIOD DEADLINE**

All comments must be postmarked, faxed, or time stamped not later than November 30, 2018. Hand-delivered comments must be delivered to the appropriate office by 4:45 p.m. on the above-listed deadline date.

Additional information regarding this action may be obtained from MaryAnn Stevens, Rules Development Branch, Office of Legal Counsel, (317) 232-8635 or (800) 451-6027 (in Indiana).

#### **DRAFT RULE**

SECTION 1. [327 IAC 5-2-3](#) IS AMENDED TO READ AS FOLLOWS:

##### **[327 IAC 5-2-3](#) Permit application**

**Authority:** [IC 13-14-8](#); [IC 13-14-9](#); [IC 13-15-1-2](#); [IC 13-15-2-1](#); [IC 13-18-3](#)

**Affected:** [IC 13-11-2](#); [IC 13-18-3-15](#); [IC 13-18-4](#)

Sec. 3. (a) ~~Any~~ **A** person required to have an NPDES permit, except for ~~persons~~ **a person** covered by a general NPDES ~~permits~~ **permit** under [327 IAC 15](#), shall submit a complete application to the commissioner in accordance with this section, [327 IAC 5-3](#), and 40 CFR 122.21\*, ~~in lieu of as amended by 83 FR 730\*~~, using the:

- (1) forms specified in this section; ~~a person may submit the application using or~~
- (2) equivalent state forms provided by the commissioner.

(b) An application for a permit shall **must** be submitted to the commissioner ~~by the time specified in~~ **according to the time requirement in one (1) of the following:**

- (1) [327 IAC 5-3-2](#), or, in the case of an application for a statutory modification of or variance from effluent limitations, ~~by the time specified in~~
- (2) [327 IAC 5-3-4](#) for an application for either of the following:
  - (A) **A statutory modification of an effluent limitation.**
  - (B) **A variance from an effluent limitation.**

(c) The **application must be submitted and a permit obtained by the:**

- (1) owner of the facility or operation from which a discharge of pollutants occurs; ~~is responsible for applying for and obtaining a permit; except where or~~
- (2) **operator of the facility or operation from which a discharge of pollutants occurs**, if the facility or operation is operated by a person other than an employee of the owner. ~~in which case it is the operator's duty to apply for and obtain a permit.~~

(d) ~~All applicants~~ **An applicant** for an NPDES ~~permits~~ **permit**, other than ~~POTWs~~, **a POTW**, shall submit to the commissioner a completed Application Form 1, General Information EPA Form 3510-1, revised August 1990\*\*.

(e) Existing industrial facilities, including a:

- (1) manufacturing;
- (2) commercial;
- (3) mining; ~~and or~~
- (4) silvicultural;

~~operations,~~ **operation**, applying for an NPDES ~~permits~~ **permit** shall provide the commissioner with the additional information specified in Application Form 2C, Wastewater Discharge Information, EPA Form 3510-2C, revised August 1990\*\*.

(f) ~~A new and or existing concentrated animal feeding operations and operation or a concentrated aquatic animal production facilities~~ **facility** shall provide the commissioner with the additional information specified in Form 2B NPDES, Applications for Permit to Discharge Wastewater, Concentrated Animal Feeding Operations and Aquatic Animal Production Facilities, EPA Form 3510-2B, revised November 2008\*\*.

(g) ~~A new and or existing POTWs~~ **POTW** shall provide the additional information specified by 40 CFR 122.21(j)\*, ~~as amended by 83 FR 730\*~~, on NPDES Form 2A, Application Overview, EPA Form 3510-2A, revised January 1999\*\*. ~~Pursuant to~~ **Under** 40 CFR 122.21(j)\*, ~~as amended by 83 FR 730\*~~, the commissioner may waive any requirement of Form 2A\*\* that is not of material concern for a specific permit, if approved by **U.S. EPA**. The following POTWs shall provide the results of valid whole effluent biological toxicity testing to the commissioner:

- (1) ~~All POTWs~~ **A POTW** with a design influent ~~flows~~ **flow** equal to or greater than one million (1,000,000) gallons per day.
- (2) ~~All POTWs~~ **A POTW** with an approved pretreatment ~~programs~~ **program** or ~~POTWs~~ **a POTW** required to develop a pretreatment program.

(h) In addition to ~~the POTWs~~ **a POTW** listed in subsection (g), the commissioner may require other POTWs to submit the results of toxicity tests with their permit applications, based on consideration of the following factors:

- (1) The variability of the pollutants or pollutant parameters in the POTW effluent based on chemical-specific information **and** the type of industrial contributors.
- (2) The dilution of the effluent in the receiving water **as the** ratio of effluent flow to receiving stream flow.
- (3) Existing controls on ~~a point or nonpoint sources,~~ **source**, including: ~~total maximum daily load~~

(A) TMDL calculations for the waterbody segment; and

(B) the relative contribution of **load from the POTW**.

(4) Receiving stream characteristics, including:

(A) possible or known water quality ~~impairment~~; **impairments**; and

(B) **a determination** whether the POTW discharges to:

(i) one (1) of the Great Lakes; or

(ii) a water designated as an outstanding ~~natural state~~ **natural state** resource.

(5) Other considerations (~~including, but not limited to, the history of toxic impact and compliance problems at the POTW~~), ~~which that~~ the commissioner determines could cause or contribute to adverse water quality impacts, **including, at a minimum, a history of:**

(A) **toxic impact from the POTW; or**

(B) **compliance problems at the POTW.**

(i) For ~~POTWs~~ **a POTW** required under subsection (g) or (h) to conduct toxicity testing, ~~POTWs~~ **the POTW** shall:

(1) use **U.S.** EPA's methods or other established protocols ~~which that~~ are:

(A) scientifically defensible; and

(B) sufficiently sensitive to detect aquatic toxicity; ~~Such and~~

(2) **perform the toxicity** testing ~~must have been conducted since more recently than~~ the last NPDES permit:

(A) reissuance; or

(B) permit modification;

under 40 CFR 122.62(a)\*, whichever occurred later.

(j) ~~All POTWs~~ **A POTW** with **an** approved pretreatment ~~programs~~ **program** shall provide, to the commissioner, a written technical evaluation of the need to revise local limits under 40 CFR 403.5(c)(1)\*.

(k) Except for ~~stormwater~~ **storm water** discharges, ~~all an~~ existing industrial ~~facilities~~ **facility** engaged in a:

(1) manufacturing;

(2) commercial;

(3) mining; ~~and or~~

(4) silvicultural;

~~operations~~ **operation** shall provide the additional information specified in Application Form 2C, Wastewater Discharge Information, EPA Form 3510-2C, revised August 1990\*\*.

(l) Except for storm water discharges, ~~all a~~ new industrial ~~facilities~~ **facility** engaged in a:

(1) manufacturing;

(2) commercial;

(3) mining; ~~and or~~

(4) silvicultural;

~~operations~~ **operation** shall provide the additional information specified in Application Form 2D, New Sources and New Dischargers: Application for Permit to Discharge Process Wastewater, EPA Form 3510-2D, revised August 1990\*\*.

(m) Except for storm water discharges, ~~all a~~ **a discharger** engaged in a:

(1) manufacturing;

(2) commercial;

(3) mining; ~~and or~~

(4) silvicultural; ~~dischargers~~

**operation that is** applying for ~~an NPDES permits which discharge~~ **permit that discharges** only nonprocess wastewater not regulated by an effluent limitations guideline or new source performance standard shall provide the commissioner with the additional information specified in Application Form 2E, Facilities Which Do Not Discharge Process Wastewater, revised August 1, 1990\*\*.

(n) ~~Discharges~~ **A discharger** of storm water associated with new ~~and or~~ existing industrial activity as defined in 40 CFR 122.26(b)(14)\* shall provide additional information specified in NPDES Form 2F, Application for Permit to Discharge Storm Water Discharges Associated with Industrial Activity, EPA Form 3510-2F, revised January 1992\*\*.

- (o) Applicants **An applicant** shall keep records of: all  
(1) data used to complete permit applications; and ~~any~~  
(2) supplemental information;

submitted under this section for a period of at least three (3) years from the date the application is signed.

(p) In the case of an application for permit reissuance by a manufacturing, commercial, mining, or silvicultural discharger who has previously submitted an application in accordance with subsection (e) or (l), the permittee may request a waiver of the submission of analytical data for toxic pollutants ~~otherwise~~ **that may be** required as part of the application if:

- (1) analyses reported in the previous application or applications of at least two (2) samples of the effluent did not detect the presence of the toxic pollutants; and  
(2) the permittee certifies that, to the best of his ~~or her~~ knowledge, no change in ~~his~~ **the** operation has occurred since the previous application or applications that would give reason to believe the previous results would no longer be applicable.

The commissioner may grant or deny, ~~in at~~ the commissioner's discretion, a request for a waiver under this subsection.

(q) For discharges to waters within the Great Lakes system, in addition to the other requirements of this section, **the following must be met:**

(1) Applicants requesting a permit renewal shall **complete the following:**

(A) Submit valid, representative receiving waterbody monitoring data for every metal monitored or limited in the applicant's existing permit. ~~If the existing permit contains monitoring for cadmium, chromium (III), copper, lead, nickel, or zinc, the applicant shall also~~

(B) Submit receiving waterbody monitoring data for:

(i) hardness, ~~The commissioner may require waterbody monitoring for if the existing permit contains monitoring for:~~

(AA) cadmium;

(BB) chromium (III);

(CC) copper;

(DD) lead;

(EE) nickel; or

(FF) zinc; and

(ii) additional substances, if the **commissioner requires the information because the** data are necessary to process the permit application.

If valid, representative, monitoring data in the waterbody for these parameters are already available, the applicant may request that this existing data substitute for the monitoring required under this ~~subsection-~~ **subdivision**. The commissioner may require the submission of this additional receiving waterbody monitoring data for applicants requesting a new, renewal of, or modification of an NPDES permit if these additional data are necessary to draft an NPDES permit.

(2) **A permittee authorized to discharge a combined sewer overflow to the Great Lakes Basin as defined in 40 CFR 122.2\*, as amended by 83 FR 730\*, shall submit a public notification plan as part of its permit application that:**

(A) is developed in accordance with [327 IAC 5-2.2](#) and 40 CR 122.38\*, as added by 83 FR 730\*; and

(B) describes any significant updates to the plan that may have occurred since the last plan submission.

**\*These documents are incorporated by reference. Copies may be obtained from the Government Publishing Office, [www.gpo.gov](http://www.gpo.gov), or are available for review at the Indiana Department of Environmental Management, Office of Legal Counsel, Indiana Government Center North, Thirteenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204.**

(†) **\*\*The permit application forms described in this section are available online at <http://efpub.epa.gov/npdes/> or from by contacting the IDEM Office of Water Quality, Indiana Government Center North, 100 North Senate Avenue, Room N1255, Indianapolis, Indiana 46204 or [owqwwper@idem.in.gov](mailto:owqwwper@idem.in.gov).**

*(Water Pollution Control Division; [327 IAC 5-2-3](#); filed Sep 24, 1987, 3:00 p.m.: 11 IR 618; filed Feb 26, 1993, 5:00 p.m.: 16 IR 1738; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1422; errata filed Aug 11, 1997, 4:15 p.m.: 20 IR 3378; filed Oct 9, 2015, 4:07 p.m.: [20151104-IR-327100659FRA](#))*



SECTION 2. [327 IAC 5-2-10](#) IS AMENDED TO READ AS FOLLOWS:**[327 IAC 5-2-10](#) Applicable limitations, standards, and conditions****Authority:** [IC 13-14-8](#); [IC 13-14-9](#); [IC 13-15-1-2](#); [IC 13-18-3-2.6](#)**Affected:** [IC 13-11-2](#); [IC 13-18-4](#)

Sec. 10. (a) Each NPDES permit must provide for and ensure compliance with all applicable requirements of the Clean Water Act (CWA), regulations promulgated under the CWA, and state law. For the purposes of this section, an applicable requirement is a statutory or regulatory requirement that takes effect under state law before final administrative disposition of a permit. In addition to the requirements of sections 6, 8, 9, and 12 of this rule, ~~permits~~ **a permit** must contain terms and conditions that ensure compliance with the following as applicable:

(1) Effluent limitations and standards under **CWA** Sections:

- (A) 301\*;
- (B) 304\*;
- (C) 307(a)\*;
- (D) 318\*; and
- (E) 405\*.

~~of the CWA.~~

(2) Standards of performance for new sources under:

- (A) Section 306\* of the CWA; and
- (B) 40 CFR 122.44(a)\*.

(3) In the case of a POTW ~~which~~ **that** primarily is designed and utilized for the treatment of wastewater from an industry of a particular class or category, effluent limitations or standards that would apply under Section 301\*, 304\*, 306\*, 307\*, 318\*, or 405\* of the CWA to the industry if it were a direct discharger. If the POTW receives sewage from domestic sources as well as industrial wastewater, the permit must include composite (or hybrid) effluent limitations comprising the effluent **limitations**:

- (A) ~~limitations~~ or standards applicable to the industrial wastewater, as specified in this subdivision; and
- (B) ~~limitations~~ applicable to the domestic sewage under Sections 301\* and 304\* of the CWA.

The composite limitations must be cumulative for mass limitations and weighted in proportion to respective flows for concentration limitations.

(4) ~~Any~~ **An** effluent ~~limitations limitation~~ or other ~~requirements requirement~~ in addition to, or more stringent than, ~~a promulgated effluent limitations guidelines limitation guideline or standards standard~~ under ~~Sections~~ **Section** 301\*, 304\*, 306\*, 307\*, 318\*, ~~and or~~ 405\* of the CWA where necessary to do the following:

- (A) Achieve water quality standards established by the board or by U.S. EPA in accordance with Sections 118\* and 303\* of the CWA. Numeric water quality-based effluent limitations must be established in accordance with sections 11.1 and 11.4 through 11.6 of this rule.
- (B) Attain or maintain a specified water quality through water quality related effluent limits established under Section 302\* of the CWA.
- (C) Incorporate, in accordance with Section 301(b)(1)(C)\* of the CWA, ~~any~~ more stringent limitations, treatment standards, or schedules of compliance requirements established under federal or state law or regulations, including those adopted under interstate agreements or compacts such as the Ohio River Valley Water Sanitation Commission (ORSANCO).
- (D) Ensure consistency with the requirements of a water quality management plan approved by U.S. EPA under Section 208(b)\* of the CWA.
- (E) Incorporate alternative effluent limitations or standards where warranted by fundamentally different factors under [327 IAC 5-6](#).

(5) The following requirements for toxic pollutant limitations:

- (A) Limitations established under subdivision (1), (2), (3), or (4) to control pollutants meeting the criteria listed in clause (B). The limitations must be established in accordance with clause (C).
- (B) Limitations must control all toxic pollutants that the:
  - (i) commissioner determines (based on information reported in a permit application or in a notification under section 9 of this rule or on other information) are or may be discharged at a level greater than the level that is allowed under the technology-based effluent limitations applicable to the permittee under the CWA (see [327 IAC 5-5-2\(c\)](#)); or
  - (ii) discharger does or may use or manufacture as an intermediate or final product or byproduct; however, limitations are not required under this subdivision merely because the discharger does or may use or manufacture a toxic pollutant under research or laboratory conditions.
- (C) The requirement that the limitations control the pollutants meeting the criteria of clause (B) must be satisfied by limitations on:

- (i) those pollutants; or
- (ii) other pollutants that, in the judgment of the commissioner, will ensure treatment of the pollutants specified under clause (B) to the levels required by the CWA.
- (D) As used in this subdivision, "toxic pollutant" means:
  - (i) a pollutant listed as toxic under Section 307(a)(1)\* of the CWA; or
  - (ii) a pollutant or a combination of pollutants determined by the commissioner to have significant toxic characteristics when discharged into the waters of the state for organisms reasonably expected to be exposed to the pollutant or pollutants.
- (6) For permits issued before the promulgation by the administrator of applicable effluent limitations and standards (including best management practices) under Sections 301\*, 304\*, 307\*, 318\*, and 405\* of the CWA, limitations and other conditions as the commissioner determines to be necessary to carry out those provisions of the CWA under [327 IAC 5-5-2\(b\)](#) and Section 402(a)(1)\* of the CWA.
- (7) Best management practices to control or abate the discharge of pollutants where:
  - (A) required under Section 304(e)\* of the CWA for the control of toxic and hazardous pollutants from ancillary industrial activities;
  - (B) numeric effluent limitations are infeasible; or
  - (C) the practices are reasonably necessary to achieve effluent limitations and standards or to carry out the purposes and intent of the CWA.

Examples of best management practices that may be appropriate under clause (B) include proper operation and maintenance criteria and sludge-handling requirements. Examples of best management practices that may be appropriate under clause (C) include the construction of sheds over material storage piles to prevent rainfall from leaching materials from these piles and creating a source of pollution, ditching and diversion of rainfall run-off to minimize or prevent contamination from a discharger's manufacturing operations, and the use of solid, absorbent materials for cleaning up leaks and drips as opposed to washing these materials down a floor drain creating additional sources of pollution.
- (8) Twenty-four (24) hour reporting. Pollutants for which the permittee must report violations of maximum daily discharge limitations under section 8(11)(C)(ii) of this rule (twenty-four (24) hour reporting) must be listed in the permit. This list must include any:
  - (A) toxic pollutant or hazardous substance; or
  - (B) pollutant specifically identified as the method to control a toxic pollutant or hazardous substance.
- (9) Any conditions that the Secretary of the Army considers necessary to ensure that navigation and anchorage will not be substantially impaired in accordance with [327 IAC 5-3-10\(a\)](#).
- (10) Additional conditions applicable to ~~POTWs~~ **a POTW** are as follows:
  - (A) Any conditions imposed in grants made by the administrator to ~~POTWs~~ **a POTW** under Sections 201\* and 204\* of the CWA that are reasonably necessary for the achievement of effluent limitations required under Section 301\* of the CWA.
  - (B) Requirements under Section 405\* of the CWA governing the disposal of sewage sludge from ~~POTWs~~ **a POTW** or any other treatment works treating domestic sewage for any use for which rules have been established in accordance with any applicable rules.
  - (C) ~~All POTWs~~ **A POTW** shall identify, in terms of character and volume of pollutants, any significant indirect discharges into the POTW that are subject to pretreatment standards under Section 307(b)\* and 307(c)\* of the CWA.
  - (D) ~~All POTWs~~ **A POTW** must provide adequate notice to the commissioner of the following:
    - (i) Any new introduction of pollutants into the POTW from an indirect discharger that would be subject to Section 301\* or 306\* of the CWA if it were directly discharging those pollutants.
    - (ii) Any substantial change in the volume or character of pollutants being introduced into that POTW by any source where the change would:
      - (AA) render the source subject to pretreatment standards under Section 307(b)\* ~~or~~ **and** 307(c)\* of the CWA; or
      - (BB) result in a modified application of the standards.

As used in this clause, "adequate notice" includes information on the quality and quantity of effluent introduced into the POTW and any anticipated impact of the change on the quantity or quality of effluent to be discharged from the POTW.
  - (E) ~~POTWs~~ **A POTW** must develop and submit to the commissioner a POTW pretreatment program when required by 40 CFR 403\* and [327 IAC 5-19-1](#) in order to ensure compliance by industrial users of the POTW with applicable pretreatment standards established under ~~Sections~~ **Section** 307(b)\* and 307(c)\* of the CWA. The pretreatment program must:
    - (i) meet the criteria of [327 IAC 5-19-3](#); and
    - (ii) once approved, be incorporated into the POTW's permit.
- (11) Antidegradation requirements are as follows:
  - (A) In the case of effluent limitations established on the basis of Section 402(a)(1)(B)\* of the CWA, a permit

may not be renewed, reissued, or modified on the basis of effluent guidelines promulgated under Section 304(b)\* of the CWA subsequent to the original issuance of the permit to contain effluent limitations that are less stringent than the comparable effluent limitations in the previous permit. In the case of effluent limitations established on the basis of Section 301(b)(1)(C)\*, 303(d)\*, or 303(e)\* of the CWA, a permit may not be renewed, reissued, or modified to contain effluent limitations that are less stringent than the comparable effluent limitations in the previous permit except in compliance with Section 303(d)(4)\* of the CWA.

(B) A permit, ~~with respect to~~ in which clause (A) applies, may be renewed, reissued, or modified to contain less stringent effluent limitations applicable to a pollutant if:

- (i) material and substantial alterations or additions to the permitted facility occurred after permit issuance that justify the application of a less stringent effluent limitation;
- (ii) information is available that:

(AA) was not available at the time of permit issuance (other than revised regulations, guidance, or test methods); and

(BB) would have justified the application of a less stringent effluent limitation at the time of permit issuance;

or the commissioner determines that technical mistakes or mistaken interpretations of law were made in issuing the permit under Section 402(a)(1)(B)\* of the CWA;

(iii) a less stringent effluent limitation is necessary because of events:

(AA) over which the permittee has no control; and

(BB) for which there is no reasonably available remedy;

(iv) the permittee has received a permit modification under Section 301(c)\*, 301(g)\* through 301(i)\*, 301(k)\*, 301(n)\*, or 316(a)\* of the CWA; or

(v) the permittee has installed the treatment facilities required to meet the effluent limitations in the previous permit and has properly operated and maintained the facilities, but has nevertheless been unable to achieve the previous effluent limitations, in which case the limitations in the reviewed, reissued, or modified permit may reflect the level of pollutant control actually achieved (but must not be less stringent than required by effluent guidelines in effect at the time of permit renewal, reissuance, or modification).

Item (ii) ~~shall~~ **does** not apply to any revised waste load allocations or any alternative grounds for translating water quality standards into effluent limitations, except where the cumulative effect of the revised allocations results in a decrease in the amount of pollutants discharged into the concerned waters, and the revised allocations are not the result of a discharger eliminating or substantially reducing its discharge of pollutants due to complying with the requirements of the CWA or for reasons otherwise unrelated to water quality.

(C) In no event may a permit ~~with respect to~~ in which clause (A) applies be renewed, reissued, or modified to contain an effluent limitation that is less stringent than required by effluent guidelines in effect at the time the permit is renewed, reissued, or modified. In no event may a permit to discharge into waters be renewed, reissued, or modified to contain a less stringent effluent limitation if the implementation of the limitation would result in a violation of a water quality standard under Section 303\* of the CWA, [327 IAC 2-1](#), or [327 IAC 2-1.5](#) applicable to the waters.

(12) For a POTW, any conditions expressly applicable to any user, as a limited co-permittee, that may be necessary in the permit issued to the treatment works to ensure compliance with applicable requirements under this subdivision. Alternatively, the commissioner may issue separate permits to the treatment works and to its users or may require a separate permit application from any user. The commissioner's decision to:

(A) issue a permit with no conditions applicable to any user;

(B) impose conditions on one (1) or more users;

(C) issue separate permits; or

(D) require separate applications;

and the basis for that decision, must be stated in the fact sheet for the draft permit for the treatment works.

(b) ~~Notwithstanding~~ **In addition to** the requirements of this section, where appropriate, **an** NPDES ~~permits~~ **permit** for ~~communities~~ **a community** with ~~an approved LTCPs~~ **an approved LTCP** that ~~are~~ **is** consistent with the federal CSO policy must contain ~~schedules~~ **a schedule** of compliance for meeting final water quality-based effluent limitations for CSOs, provided the permit:

(1) requires compliance with applicable standards and water quality-based effluent limitations as soon as possible in accordance with 40 CFR 122.47(a)(1)\* and in no event beyond the period specified in the approved LTCP for implementation of the LTCP;

(2) contains interim requirements, milestones, and final water quality-based effluent limitations and dates certain ~~by which~~ **when** those requirements, milestones, and limitations will be met, even if these dates are beyond the term of the permit;

(3) complies in all other respects with the requirements of 40 CFR 122.47\*; and



(4) requires implementation of the approved LTCP.

(c) The department shall, where appropriate, and upon the request of the permittee, incorporate into the NPDES permit that contains water quality-based effluent limitations associated with CSOs a schedule of compliance provided that all the conditions in subsection (b) are met.

(d) A permit issued authorizing the discharge of a CSO to the Great Lakes Basin must include the following:

(1) A requirement to implement the public notification requirements in [327 IAC 5-2.2](#) and 40 CFR 122.38(a)\*, as added by 83 FR 730\*.

(2) The specific information that must be included on discharge point signage, which, at a minimum, must include the elements included in [327 IAC 5-2.2](#) and 40 CFR 122.38(a)(1)(ii)\*, as added by 83 FR 730\*.

(3) The locations of discharge points and public access areas where signs are required in accordance with [327 IAC 5-2.2](#) and 40 CFR 122.38(a)(1)(i)\*, as added by 83 FR 730\*.

(4) Information regarding the timing and minimum content required for initial and supplemental notifications to be provided to the following:

(A) Local public health departments and other potentially affected entities in accordance with [327 IAC 5-2.2](#) and 40 CFR 122.38(a)(2)\*, as added by 83 FR 730\*.

(B) The public in accordance with [327 IAC 5-2.2](#) and 40 CFR 122.38(a)(3)\*, as added by 83 FR 730\*.

(5) The location of each CSO discharge:

(A) that must be monitored for volume and discharge duration; and

(B) where the CSO volume and duration may be estimated.

(6) Submission of an annual notice in accordance with [327 IAC 5-2.2](#) and 40 CFR 122.38(b)\*, as added by 83 FR 730\*.

(7) Protocols for providing the annual notice required in accordance with [327 IAC 5-2.2](#) and 40 CFR 122.38(b)\*, as added by 83 FR 730\* available to the public.

\*These documents are incorporated by reference. Copies may be obtained from the Government Publishing Office, [www.gpo.gov](http://www.gpo.gov), or are available for review at the Indiana Department of Environmental Management, Office of Legal Counsel, Indiana Government Center North, Thirteenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204.

(Water Pollution Control Division; [327 IAC 5-2-10](#); filed Sep 24, 1987, 3:00 p.m.: 11 IR 623; filed Feb 26, 1993, 5:00 p.m.: 16 IR 1743; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1426; errata filed Aug 11, 1997, 4:15 p.m.: 20 IR 3378; filed Sep 6, 2007, 12:25 p.m.: [20071003-IR-327050218FRA](#); filed Sep 6, 2018, 11:50 a.m.: [20181003-IR-327170278FRA](#))

SECTION 3. [327 IAC 5-2.1-2](#) IS AMENDED TO READ AS FOLLOWS:

#### **[327 IAC 5-2.1-2](#) Applicability**

Authority: [IC 13-14-1-5](#); [IC 13-14-8](#); [IC 13-14-9](#); [IC 13-18-4-1](#)

Affected: [IC 13-18-3](#)

Sec. 2. ~~Any~~ This rule applies to a person:

(1) required to possess a National Pollutant Discharge Elimination System (NPDES) permit; and

(2) having one (1) or more combined sewer overflow outfalls into waters of the state; ~~must comply with this rule.~~

unless the person is required to comply with 40 CFR 122.38\*, as added by 83 FR 730\*, and [327 IAC 5-2.2](#).

\*This document is incorporated by reference. Copies may be obtained from the Government Publishing Office, [www.gpo.gov](http://www.gpo.gov), or are available for review at the Indiana Department of Environmental Management, Office of Legal Counsel, Indiana Government Center North, Thirteenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204.

(Water Pollution Control Division; [327 IAC 5-2.1-2](#); filed Apr 9, 2003, 2:55 p.m.: 26 IR 2613; readopted filed Sep 17, 2009, 3:49 p.m.: [20091014-IR-327090595BFA](#); readopted filed Oct 20, 2015, 8:41 a.m.: [20151118-IR-327150285BFA](#))

SECTION 4. [327 IAC 5-2.2](#) IS ADDED TO READ AS FOLLOWS:

**Rule 2.2. Public Notification Requirements for Combined Sewer Overflows to the Great Lakes Basin**

**[327 IAC 5-2.2-1](#) Applicability**

Authority: [IC 13-13-5](#); [IC 13-14-8](#); [IC 13-18-3](#); [IC 13-18-16-8](#); [IC 13-18-16-9](#)

Affected: [IC 13-18-2](#); [IC 13-18-16](#)

Sec. 1. (a) The requirements of this rule and 40 CFR 122.38\* apply to a permittee authorized to discharge a combined sewer overflow to the Great Lakes Basin.

(b) A permittee described under subsection (a) must comply with the requirements of this rule and 40 CFR 122.38\* for both authorized and unauthorized CSO outfalls listed in the permit.

(c) A reference to a provision of the Code of Federal Regulations (CFR) means the July 1, 2018, edition.

\*This document is incorporated by reference. Copies may be obtained from the Government Publishing Office, [www.gpo.gov](http://www.gpo.gov), or are available for review at the Indiana Department of Environmental Management, Office of Legal Counsel, Indiana Government Center North, Thirteenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204.

(Water Pollution Control Division; [327 IAC 5-2.2-1](#))

**[327 IAC 5-2.2-2](#) Definitions**

Authority: [IC 13-13-5](#); [IC 13-14-8](#); [IC 13-18-3](#); [IC 13-18-16-8](#); [IC 13-18-16-9](#)

Affected: [IC 13-18-2](#); [IC 13-18-16](#)

Sec. 2. When used in 40 CFR 122.38\*, the following definitions apply:

(1) "Combined sewer overflow" or "CSO" means a discharge from a combined sewer system (CSS) at a point prior to the publicly owned treatment works (POTW) treatment plant, as defined at 40 CFR 403.3(r)\* and [327 IAC 5-1.5-43](#).

(2) "Combined sewer system" or "CSS" means a wastewater collection system owned by a state or municipality, as defined by Section 502(4) of the Clean Water Act, that conveys sanitary wastewaters (domestic, commercial, and industrial wastewater) and storm water through a single-pipe system to a POTW treatment plant, as defined at 40 CFR 403.3(r)\* and [327 IAC 5-1.5-43](#).

(3) "Great Lakes Basin" means the waters defined as "Great Lakes" and "Great Lakes System" as defined in 40 CFR 132.2\*.

\*These documents are incorporated by reference. Copies may be obtained from the Government Publishing Office, [www.gpo.gov](http://www.gpo.gov), or are available for review at the Indiana Department of Environmental Management, Office of Legal Counsel, Indiana Government Center North, Thirteenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204.

(Water Pollution Control Division; [327 IAC 5-2.2-2](#))

SECTION 5. [327 IAC 5-2.1-1](#) IS REPEALED.

**[Notice of Public Hearing](#)**

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